

NITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FIREMAN'S FUND INSURANCE
COMPANY,

Plaintiff,

vs.

HARTFORD FIRE INSURANCE
COMPANY, and DOES 1 through 100,
inclusive,

Defendants.

Case No: C 11-1789 SBA

ORDER

On April 12, 2011, Fireman's Fund Insurance Company ("Fireman's Fund") commenced the instant diversity jurisdiction insurance coverage action in this Court against Hartford Fire Insurance Company ("Hartford"). Fireman's Fund seeks a determination that Hartford is obligated to provide a defense for their mutual insureds in connection with four construction defect actions pending in Hawaii state court. In addition, Fireman's Fund seeks "equitable contribution from Hartford for Hartford's share of all sums paid by Fireman's Fund" in connection with the underlying actions. Compl. at 13, Dkt. 1.

On September 19, 2011, the insureds, Simpson Manufacturing and Simpson Strong-Tie, along with their Hawaiian distributor, Honolulu Wood Treating LLC (collectively "Intervenors"), filed a Complaint in Intervention which seeks a determination that Hartford has a duty to defend in the underlying actions. Dkt. 26.

On November 3, 2011, Hartford filed a Cross-Complaint for Declaratory Relief against Fireman's Fund seeking a declaration that Fireman's Fund has a duty to defend and

1 indemnify Intervenor in connection with the underlying construction defect actions,
2 pursuant to three Hartford policies. Dkt. 40.¹

3 The parties are presently before the Court on Intervenor's Motion to Stay
4 Proceedings. Dkt. 59. In their motion, Intervenor contends that the present declaratory
5 relief action should be stayed pending resolution of the four underlying state court actions.
6 Relying principally on Montrose Chemical Corporation of California. v. Superior Court, 6
7 Cal.4th 287 (1993), Intervenor contends that the factual determinations necessary to resolve
8 the pertinent coverage issues are effectively identical to the issues that will be resolved in
9 the underlying lawsuits. In their reply, however, Intervenor focus their attention on the
10 argument that the absence of National Union, a third insurer, from this action precludes the
11 Court's ability to assess the equitable allocation of defense costs between all insurers.
12 Intervenor's Reply at 1, Dkt. 72. Intervenor asserts:

13 But any equitable allocation of defense costs among Simpson's
14 three insurers necessarily must include National Union.
15 Similarly, any action that proceeds without National Union
16 inevitably entails piecemeal and/or duplicative litigation and,
17 consequently, an unacceptable risk of inconsistent adjudications
18 to Simpson, the common policyholder. This in fact makes
19 National Union an indispensable party to coverage litigation
20 arising out of the underlying Ocean Pointe claims.

21 Id.

22 Intervenor's contention that National Union is an indispensable party was not
23 specifically and distinctly set forth in their moving papers. As such, it is not properly
24 before the Court. Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007). Nonetheless,
25 Intervenor's argument requires further exploration. "[A]n action in equity cannot be
26 maintained without the joinder of indispensable parties." California v. Arizona, 440 U.S.
27 59, 62 (1979). To find that an absent party is "indispensable," the Court must first deem
28 the party "*necessary*" under Federal Rule of Civil Procedure 19(a)(1). Schnabel v. Lui, 302
F.3d 1023, 1029 (9th Cir. 2002). "In determining whether a party is 'necessary' under Rule

¹ Also pending is Hartford's motion for partial summary judgment. Dkt. 47.

1 19(a), the court must consider whether ‘complete relief’ can be accorded among the
2 existing parties, and whether the absent party has a ‘legally protected interest’ in the subject
3 of the suit.” Id. (quoting Rule 19(a)). A motion to dismiss an action for failure to join an
4 indispensable party may be brought under Federal Rule of Civil Procedure 12(b)(7).

5 At this juncture, the issue of whether National Union’s absence from this action
6 warrants a stay (or dismissal) has not been adequately briefed. Therefore, the Court finds
7 that as a matter of effective judicial administration, Intervenor may refile their motion to
8 stay and include their argument that National Union is an indispensable party in their
9 opening brief. Such an approach will afford Fireman’s Fund and Hartford a full and fair
10 opportunity to address this particular issue in their respective opposition papers and the
11 Court an opportunity to fully evaluate the issue in the context of the parties’ respective
12 positions. Accordingly,

13 IT IS HEREBY ORDERED THAT:


14 1. Intervenor’s motion to stay is DENIED without prejudice. Intervenor may
15 file a renewed motion, consistent with the above, within fourteen days of the date this
16 Order is filed. Hartford and Fireman’s Fund’s responses and Intervenor’s reply shall be
17 filed within fourteen and seven days of the date the renewed motion is filed, respectively.

18 2. Hartford’s motion for partial summary judgment is DENIED without
19 prejudice to renewal in the event the Court does not stay or otherwise terminate the action.

20 3. This Order terminates Docket 47 and 59.

21 IT IS SO ORDERED.

22 Dated: September 28, 2012


SAUNDRA BROWN ARMSTRONG
United States District Judge